

GARY.B. NELSON.
PETITIONER

- VS -

LEWIS KING CUTLER
AND
THE STATE.

In the U.S. District Court
of South Carolina.

- motion to file claim -

FILED
U.S. DISTRICT COURT, S.C.
2014 AUG 21 PM 12:41

COMES FORTH THE PETITIONER,
GARY.B. NELSON. ON BEHALF OF SAME,
IN THE U.S. DISTRICT COURT OF S.C. TO ASK THE
COURT TO REVIEW THE FOLLOWING CASE TO
DETERMINE IF IT HAS MERIT. AND, THAT PETITIONER
SHOULD PROCEED. AND, THAT THIS COURT PROVIDE
THE PETITIONER WITH THE PROPER FORMS AS WELL
AS INSTRUCTIONS ON HOW TO DO SO.

THE PETITIONER FURTHER MORE THANKS THIS COURT
FOR ITS TIME AND CONSIDERATION IN THIS MATTER.

PETITION OF CASE IS AS FOLLOWS:

(1)

- BRIEF Statement of facts -

ON DECEMBER 17, 2013 THE PLAINTIFF WAS TO APPEAR BEFORE THE Hon. JUDGE YOUNG. IN THE THIRD JUDICIAL CIRCUIT. OF S.C. FOR SENTENCING, (SEE ATTACHED FOR LIST OF OFFENSES) ON THAT DATE HE WAS PLEADING HIS GUILT TO THE SAID OFFENSES FOR A SENTENCE OF PROBATION. ON THAT DATE THE OFFENDER WAS ADMITTED TO THE CAROLINA PINES HOSPITAL. (SEE ATTACHED) FOR EMERGENCY CARE SERVICES. HIS LAWYER WAS CONTACTED AND WAS INFORMED OF THE SITUATION TO WHICH PAPERWORK WAS FAXED TO THE LAWYER WHO APPEARED BEFORE THE COURT WITH DOCUMENTATION OF THE OFFENDER BEING IN THE HOSPITAL ON DECEMBER 16, 2013. -(1)

HOWEVER, THE OFFENDER HAD IN FACT BEEN TO THE HOSPITAL SEVERAL DAYS IN A ROW OVER THE WEEKEND BEFORE THE SAID COURT DATE. ALL OF WHICH WAS WELL KNOWN TO THE OFFENDERS LAWYER. WHO IN TURN APPEARED BEFORE THE COURT AND WITHHELD THE INFORMATION, AND AS A RESULT OF HIS ACTIONS THE OFFENDER WAS TRIED IN HIS ABSENCE. ALL OF WHICH WERE IN A VIOLATION OF THE OFFENDERS CONSTITUTIONAL RIGHTS TO DUE PROCESS.

FURTHERMORE, THE SAID OFFENDER UPON LEARNING WHAT HAD BECOME A CONFLICT OF INTEREST WITH THE AFOREMENTIONED LAWYER, ASKED HIM TO REMOVE HIMSELF AS COUNSEL, WHICH HE REFUSED. THEREFORE, THE AFOREMENTIONED LAWYER IS LIABLE.

1) A THE OFFENDER HAD HAD A FEW CONFRONTATIONS WITH THE ASST. SOLICITOR IN HIS CASE AS HE WAS A DEFENSE ATTORNEY FOR

(2)

SEVERAL STATE GOVERNMENT OFFICES THAT THE OFFENDER HAD FILED AND WON CIVIL CASES AGAINST IN COURT. AFTER A VERBAL CONFRONTATION IN WHICH THE SAID SOLICITOR "CURSED" THE OFFENDER FOR REFUSING AN EARLIER PLEA.

HE AT THAT POINT ADVISED HIS LAWYER THAT HE WANTED TO SEE ABOUT HAVING HIM REMOVED FROM TRYING HIS CASE. TO WHICH HE WAS INFORMED THAT HE COULD PETITION THE COURT TO DO SO. BUT. WAS NEVER DONE. IN FACT.

ON DECEMBER 17, 2013 THE LAWYER AND THE SOLICITOR IN HIS CASE. CHOSE TO NOT INFORM THE COURT OF THE WHEREABOUTS OF THE OFFENDER. WHEREIN THE COURT DIDN'T GRANT A CONTINUANCE FOR HEALTH REASONS. AND.

THE SOLICITOR THEN WITHDREW THE PLEA AFTER HE LEARNED THAT THE OFFENDER WOULDN'T BE ABLE TO MAKE IT TO COURT FOR HEALTH REASONS. AT THAT POINT HIS LAWYER DID CONSPIRE WITH THE SOLICITOR TO GIVE FALSE TESTAMONY BEFORE THE COURT TO PREVENT SAID OFFENDER. (LAWYER DIDN'T ATTEMPT TO GET CONTINUANCE) FROM GETTING A CONTINUANCE.

WHILE DURING ALL OF THE ABOVE. BOTH THE OFFENDER'S LAWYER AND THE ASST. SOLICITOR HAD KNOWLEDGE OF WHERE THE OFFENDER WAS AND OF THE TRUE CIRCUMSTANCES AS TO WHY HE WAS NOT IN COURT ON THAT DATE.

(3)

Rule 220.(B) SCACR -

State - v - FAIREY. 374 S.C. 92, 100, 646.
S.E.2d 445, 448. (2007)

BEFORE A DEFENDANT CAN BE TRIED IN Absentia,
the TRIAL COURT must DETERMINE A DEFENDANT
"VOLUNTARILY" WAIVED HIS RIGHT TO BE PRESENT
AT TRIAL, MAKING FINDINGS OF FACT "ON THE
RECORD" THAT THE DEFENDANT.

- 1.) RECEIVED NOTICE OF HIS RIGHT TO BE PRESENT.
- 2.) WAS WARNED THAT THE TRIAL WOULD PROCEED IN
HIS ABSENCE.

STATE - v - SHULER - 344. S.C. 604, 626, 545. S.C. 2d.
805, 816. (2001)

STATE - v - Gillian. 360. S.C. 433, 455, 602.
S.E. 2d 62, 74 (Ct App. 2004)

ERROR IS HARMLESS (WHEN) IT COULD NOT REASONABLY
HAVE AFFECTED THE RESULT OF THE TRIAL.

AIKEN - v - KOONTZ, 368. S.C. 542, 629, S.E. 2d
686, 689. (Ct App. 2006)

PETITIONER ARGUES THE TRIAL JUDGE ERRED IN
TRYING HIM IN HIS ABSENCE. WHEN THERE
WAS EVIDENCE HIS FAILURE TO APPEAR FOR TRIAL
WAS NOT WILLFUL.

RULE 16.

SCR Crim P. STATE - v - CASTINEIRA, 341. S.C. 619, 535.
S.E. 2d 449 (Ct App. 2000)

(4)

MORRIS-U-STATE, 371, S.C. 278, 639, S.E. 2d 53 (2006)

WHEREIN THE SUPREME COURT FOUND COUNSEL
INEFFECTIVE IN A POST-CONVICTION RELIEF (PCR)

ACTION FOR FAILURE TO MOVE FOR A CONTINUANCE
WHEN THE DEFENDANT WAS TRIED IN ABSENTIA.
AND DETERMINED THE TRIAL COURT WOULD HAVE
COMMITTED AN ABUSE OF DISCRETION HAD THE COURT
REFUSED TO GRANT A CONTINUANCE UNDER THE
CIRCUMSTANCES OF THAT CASE.

STATE-U- PATTERSON, 367, S.C. 219, 229, 625.
S.E. 2d 339, 244. (Ct App. 2006) # 456.

STATE-U- JACKSON - 288, S.C. 94, 95, 341,
S.E. 2d 375, 375 (1986)

THE FOLLOWING IS A COMPLETE LIST OF ALL
DOCUMENTS ENCLOSED HEREIN. AS EVIDENCE OF
FACTS THAT PETITIONERS RIGHTS AND CIVIL
LIBERTIES WERE GROSSLY VIOLATED BY THE
AFOREMENTIONED PERSON(S):

- DOCUMENTS -

- 1.) LETTER TO THE S.C. SUPREME COURT OFFICE OF
DISCIPLINARY COUNSEL. RE: THE PETITIONERS LAWYER
WHO TOOK PART IN HIS RIGHTS BEING VIOLATED.
- 2.) COPY OF MOTION FOR RECONSIDERATION OF SENTENCE.
- 3.) COPY OF WORK RELEASE FORM AS EVIDENCE THAT
PETITIONER WAS IN FACT IN THE ER ON 12-17-13.
- 4.) LETTER FROM LAWYER KING CUTLER TO THE
PETITIONER WHICH IS IN FACT EVIDENCE AS TO SEVERAL
CLAIMS BY THE PETITIONER.
- 5.) LETTER FROM S.C. SUPREME COURT OFFICE OF
DISCIPLINARY COUNSEL.

(5)
6.) COPY of motion to obtain TRANSCRIPTS in REGARD
to the CASE. AS SAID TRANSCRIPTS CONTAIN
FURTHER EVIDENCE of the PETITIONERS RIGHTS BEING
VIOLATED.

ALL of the AFORESAID is TRUE AND
CORRECT to the BEST of my KNOWLEDGE.

RETURN ADDRESS.

Respectfully

GARY BERNARD NELSON. #157021
TURBEVILLE CORRECTIONAL Institution.
P.O. BOX 252
TURBEVILLE, S.C. 29162

Gary Nelson

SWORN to and subscribed before me this
19th day of Aug, 20 14.
[Signature] (L.S.)
Notary Public for South Carolina

My Commission Expires: 4-27-2016